

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Sher & Speier Analyst: Roger Lackey Bill Number: SB 48

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: July 7, 1999

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Public Record Disclosure/State Agencies Provide In Writing Determination
If Records Are Disclosable/Requires Court To Impose \$100 Fine

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as
introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as
introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 28, 1999, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would amend the California Public Records Act to require that state agencies justify the withholding of any record by demonstrating in writing that a record is exempt from disclosure or the public interest is served by not making the record public. This bill would establish a procedure to allow any person to appeal to the Attorney General (AG) if a state or local agency denies access to a public record or subverts the intent of the bill by actions short of denial of inspection. In addition, this bill would specify that a person does not have to exhaust this new administrative remedy before filing a proceeding in court to compel disclosure. Finally, this bill would provide that the court shall award a prevailing plaintiff an amount not less than \$100 for each day, up to a maximum of \$10,000, that the agency denied the right of the plaintiff to inspect the record.

SUMMARY OF AMENDMENT

The July 7, 1999, amendments added a provision that this bill would not apply to a request for public records made to a state agency by a party to a pending proceeding involving the state agency or an employee of the agency, or a pending investigation by the agency, if the AG has or is providing legal advice or representation to the state agency with regard to the related proceeding or investigation.

The amendments added two circumstances that the court shall consider when granting an award, specifically whether the agency's denial was based on a reasonable interpretation of the law and whether the plaintiff acted in good faith in pursuing the request. The amendments also would cap the award of \$100 per day to a total not to exceed \$10,000, and provided that the award shall not include the period of time that the request for an opinion is pending with the AG.

Board Position:

<input checked="" type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
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<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Department/Legislative Director Date

Johnnie Lou Rosas 7/23/1999

In addition, the amendment would specify that this bill would be operative July 1, 2000.

The amendments added a provision relating to the Public Utilities Commission, which would not impact the department.

Except for the discussion above, the department's analysis of SB 48 as amended April 28, 1999, still applies.

BOARD POSITION

Support.

On March 23, 1999, the Franchise Tax Board voted 2-0 to support this bill as introduced December 7, 1999.